

ITEM: 13

NOTICE: This Buff Sheet was prepared by and submitted on behalf of the Prosecution Team.

SUBJECT: Malaga County Water District, Wastewater Treatment Facility, Fresno County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order*

BACKGROUND:

Malaga County Water District (Malaga) owns and operates a wastewater treatment facility (WWTF), a publicly-owned treatment works which provides sewerage service for the unincorporated community of Malaga and its industrial and commercial users in Fresno County. Waste Discharge Requirements (WDRs) Order No. R5-2008-0033 (NPDES NO. CA0084239) (2008 Permit) regulated the WWTF's discharge of secondary-treated wastewater to unlined evaporation/percolation ponds, and tertiary-treated wastewater to the Fresno Irrigation District Central Canal, a water of the United States. Cease and Desist Order (CDO) No. R5-2008-0032 (2008 CDO) required Malaga to address the gap between the actual treatment and disposal capacity and the design treatment and disposal capacity. Malaga's NPDES permit was renewed as WDRs Order R5-2014-0145 in December 2014.

The consideration of this Administrative Civil Liability (ACL) Order includes violations of pretreatment program requirements contained in the 2008 NPDES Permit and of specific technical report requirements contained in the 2008 CDO through the end of 2014.

A pretreatment program, which is governed by the federal Clean Water Act and title 40 of the Code of Federal Regulations (CFR), is required to prevent the introduction of pollutants that interfere with treatment plant operations or sludge disposal, and prevent pass through of pollutants that exceed water quality objectives, standards or permit limitations. On 6 October 2004, as required by CDO No. 5-01-001 and WDRs Order No. 99-100, Malaga submitted its industrial pretreatment program and a draft ordinance to the Central Valley Water Board. The 2008 Permit incorporated and imposed specific pretreatment program requirements, including the following:

- Issue individual permits containing, at a minimum, conditions specified in 40 CFR to significant industrial users (SIU);
- Receive and analyze self-monitoring reports and other notices submitted by industrial users;
- Sample effluent from significant industrial users at least once per year;
- Publish, annually, a list of industrial users in significant non-compliance;
- Determine the necessity of a slug control plan for each SIU;
- Submit quarterly and annual pretreatment reports containing specific elements.

Malaga violated these requirements by issuing deficient industrial user permits, failing to review and analyze industrial user self-monitoring reports, failing to sample industrial users annually, failing to publish a list of industrial users in significant non-compliance, failing to evaluate the need for a slug

control plan from SIUs, and failing to submit timely, complete quarterly and annual pretreatment reports containing required information. Central Valley Water Board staff brought these issues to Malaga's attention over the course of a series of at least ten written and verbal communications from February 2010 through August 2014, including three inspections, three inspection reports, and four Notices of Violation (NOVs).

The 2008 CDO included Task 3.a, which required Malaga to evaluate the WWTF and identify short-term and long-term measures to secure adequate treatment and disposal capacity. Malaga violated the 2008 CDO by failing to submit an adequate and complete study of the WWTF's treatment and disposal capacity and a workplan to address treatment and disposal capacity issues. The violation occurred from the workplan's due date of 13 June 2008 through the rescission of the 2008 CDO on 4 December 2014. Central Valley Water Board staff informed Malaga of material deficiencies in submitted workplans, reports, and revised reports regarding capacity, and/or requested revised submittals on at least five occasions from September 2009 through August 2014, including two NOVs. The capacity evaluation requirement was subsequently carried over into a new CDO adopted in conjunction with the current NPDES permit.

On 27 January 2016, the Assistant Executive Officer issued ACL Complaint No. R5-2016-0512 (Complaint) to the Discharger. The Complaint proposes administrative civil liability in the amount of \$1,036,728, pursuant to Water Code section 13385, for failure to implement the pretreatment program as required by the 2008 Permit, and pursuant to Water Code section 13350, or in the alternative 13268, for failing to comply with the 2008 CDO.

The Prosecution Team recommends a discretionary penalty in the amount of \$1,036,728 for Malaga's failure to implement its pretreatment program and failure to comply with Cease and Desist Order No. R5-2008-0032.

ISSUES:

Malaga's failure to fully implement a compliant pretreatment program in a timely manner has undermined its ability to properly regulate those discharging to the WWTF, undermined the Central Valley Water Board's oversight role and ability to protect water quality, and rendered ineffective the public participation requirements of the federal regulations that are intended to protect the citizenry and its investment in the WWTF and collection system.

Malaga's failure to comply with the 2008 CDO requirements hindered the ability of the Central Valley Water Board to confirm the disposal capacity of the WWTF and ensure that it was sufficient to protect water quality and prevent the creation of nuisance conditions or threats to public health.

RECOMMENDATION:

Prosecution Team recommends adoption of the Administrative Civil Liability Order as proposed.

April 21, 2016 Board meeting

Mgmt. Review	<u>WDH</u>
Legal Review	<u>NSK</u>